

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

REGINA S. MAESTAS,

Plaintiff,

vs.

Civ. No. 01-1080 WWD/LFG ACE

WALGREEN DRUG STORE NO. 1820,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon Defendant's Motion to Dismiss, or in the Alternative, Motion for Summary Judgment, of the Claim of Retaliatory Discharge (Docket # 39) filed June 11, 2002.

Defendant's Contentions.

Defendant contends that Plaintiff cannot establish a prima facie case of retaliatory discharge since Plaintiff was never discharged, nor can she prove that she was fired in retaliation for acting in a way supported by public policy. Defendant further contends that Plaintiff cannot "establish a causal connection between any protected activity and her alleged 'discharge'".

Plaintiff's Contentions.

Plaintiff contends that her "claim for retaliatory discharge is supported by her unsuccessful attempts to report an assault and battery by her supervisor, the temporal proximity between her attempts and her termination from defendant's Tramway Store, and by the Manager's refusal to reinstate her." She also contends that "[t]he fact that she obtained employment at another one of defendant's stores through her own efforts does not turn a retaliatory firing into a disciplinary action."

Discussion.

The crucial factual determinations which must be made in this case are whether Plaintiff was discharged or “temporarily suspended ”; whether, if Plaintiff were discharged, the discharge was in retaliation for Plaintiff’s acting in a way supported by public policy ; and whether Plaintiff can “establish a causal connection between any protected activity and her alleged ‘discharge’”. The “facts” presented by the parties are not conclusive as to these questions. Numerous inferences could be drawn from the apparent chronology of events in this case, and such a process is within the province of the finder of fact. According, Defendant’s Motion to Dismiss, or in the Alternative, Motion for Summary Judgment, of the Claim of Retaliatory Discharge (Docket # 39) shall be **DENIED**.

IT IS SO ORDERED.


UNITED STATES MAGISTRATE JUDGE